

Enrolled
House Bill 2875

Sponsored by Representatives JENSON, P SMITH, Senator METSGER

CHAPTER

AN ACT

Relating to temporary change in point of diversion; amending ORS 540.570.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 540.570 is amended to read:

540.570. (1) Provided that the proposed transfer complies with all of the provisions of this subsection and will not result in injury to any existing water right, a district with a manager may, for one irrigation season, temporarily transfer the place of use of water appurtenant to any land within the legal boundaries of the district to an equal acreage elsewhere within the legal boundaries of that district or temporarily transfer the type of use identified in a right to store water. A temporary transfer of the place of use may occur if:

- (a) The rate and duty, and the total number of acres to which water will be applied under the transfer, do not exceed existing limits on the water use subject to transfer;
- (b) The type of use authorized under the water use subject to transfer remains the same; and
- (c) The land from which the water use is being transferred does not receive any water under the right being transferred during the irrigation season in which the change is made.

(2) Provided that the proposed transfer complies with all the provisions of this subsection and will not result in injury to or enlargement of an existing water right, a district with a manager may, for one irrigation season, temporarily change the point of diversion or appropriation combined with a change in place of use, **change the point of diversion in the event that an emergency prevents the district from diverting water from its authorized point of diversion**, change the point of diversion to allow for the appropriation of ground water or change a primary right to a supplemental right if:

- (a) The land on which the water is to be used is within the district's legal boundaries established pursuant to ORS chapter 545, 547, 552, 553 or 554;
- (b) The other terms of the permit or certificate remain the same, including the beneficial use for which the water is used and the number of acres to which water is applied;
- (c) The diversion is provided with a proper fish screen, if required by the Water Resources Department; and
- (d) For a proposal to transfer the point of diversion to allow for the appropriation of ground water, the proposed change meets the standards set forth in ORS 540.531 (2).

(3) When a district or an owner or an owner's agent within a district who is subject to the charges or assessments of the district wishes to use water on alternate acreage within the district, if the district has approved the owner's request, the district shall submit to the department a petition seeking a temporary transfer under this section. The district shall submit the petition prior to

making the proposed change. The petition may contain changes to one or more tax lots within the district and shall:

(a) Include the information required under ORS 540.574 (3);

(b) Be accompanied by a map in a form satisfactory to the department and certified by the district. If the water right is on a tract of land of five acres or less, the assessor's tax map with a notation of the acres of water right shall be sufficient for identification of the tract and place of use;

(c) Include a statement that a written authorization for the transfer from each landowner affected by the particular temporary transfer is on file with the district;

(d) Include any other information required by rules of the Water Resources Commission; and

(e) Include a fee in the amount required under ORS 536.050 (1)(i).

(4) The district shall notify each affected landowner that the department may reject the transfer or may require mitigation to avoid injury to other water rights. Upon receipt of a completed petition under subsection (3) of this section, the department shall place a summary of the petition in the weekly notice published by the department. The department shall accept written public comments on the petition for 30 days following publication of the weekly notice. The department shall consider comments that pertain to the potential for injury to an existing water right or to the enlargement of the water use subject to transfer in determining whether to condition, reject or revoke a temporary transfer.

(5) Use of water on lands from which the right is transferred and in the new temporary location during the same irrigation season or calendar year is prohibited and may subject the district and the landowner to civil penalties.

(6) The department may condition, reject or revoke a temporary transfer at any time to the extent necessary to avoid injury if the department finds the transfer is causing injury to an existing water right.

(7) Upon expiration of the temporary transfer period, all uses of water for which a temporary transfer is allowed under this section shall revert automatically to the terms and conditions of the original water right permit, certificate or adjudication under ORS chapter 539 as evidenced by a court decree.

(8) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

Passed by House May 3, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 10, 2005

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President of Senate

Received by Governor:

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Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State